IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No.121/2003

Karnail Singh ... Petitioner
! through: Mr.Jai Gupta, Adv.

VERSUS

$ Trilok Singh & Ors. ... Respondents
^ through: Mr.P.K.Seth, Adv. for respondent No.3.

% **D**ATE OF DECISION: 11-07-2007

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. On 22.3.1990, appellant Karnail Singh aged 4½ years sustained serious injuries in a vehicular accident. He is aggrieved by the quantum of compensation awarded to him.

2. Total compensation awarded to him is Rs.2,52,000/-. Break up is as under:-

(a)	Expenses incurred on account of C.T.Scan	:	Rs.2000/-.
(b)	Transportation expenses	:	Rs.15,000/-.
(c)	Special diet	:	Rs.10,000/-.
(d)	Mental and physical pain	:	Rs.25,000/-.
(e)	Non pecuniary loss for deprivation of the amenities & enjoyment of life	:	Rs.2,00,000/-.

3. Since injured Karnail Singh is in appeal and there are no cross objections I need not deal with any other issue dealt with by the learned MACT, save and except, the adequacy of the compensation awarded.

4. The date of accident is 22.3.1990. Age of the appellant as on the date of the accident was 4½ years.

5. On account of injuries sustained by the injured, his right leg was amputated below the knee. In addition, he also suffered a deep lacerated wound on the left side of the scalp near eye and compound fracture of tibia bone. Permanent disability was assessed at 65%.

6. It is not in dispute that the injured remained under treatment for a period of 1½ years. Entire treatment was at

Army Hospital, New Delhi.

7. In the light of the afore-noted backdrop facts, I shall determine the 'fairness' of the compensation assessed by the Tribunal.

8. Learned counsel for the injured urges the following 2 grounds in support of his appeal:-

(I) That the Tribunal erred in not giving compensation under the head 'loss of earning capacity'.

(II) That the compensation awarded under the head 'non pecuniary damages' is inadequate.

9. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

10. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary damages.

11. Pecuniary damages suffered are easy to determine

as the Tribunal would have some imperial data before it.

12. Pecuniary loss may include the following:-

(i) Special damages or pre-trial pecuniary loss.

(ii) Prospective loss of earnings and profits.

(iii) Medicinal expenses.

(iv) Cost of future care and other expenses.

13. One of the main items of pecuniary losses is 'loss of earnings', both past and future.

14. In the instant case, it is not in dispute that right leg of the injured was amputated below knee. He remained under treatment for a period of 1½ years. There can be no doubt about the fact that the injuries suffered by the injured would seriously hamper his earning capacity.

15. Loss of future earnings has to be determined with reference to objective facts in the shape of existing earnings, future prospects of growth in the avocation pursued by the injured. Academic qualification, nature of avocation etc. guides the court in determining loss of future earning capacity. However, a problem arises where injured is a minor child, for the reason, all these factors are missing.

16. In MAC. APP. No.630-31/2005 *Smt.Gyanti & Anr. vs. Sh.Samunder Singh & Ors.* decided on 11.7.2007, a young girl aged 7 years sustained crush injury in the right leg and vascular injury in an accident which occurred on 22.11.2002. The said injury resulted in osteomyelitis. The girl suffered permanent disability of the limb to the extent of 40% to 60%. Compensation in sum of Rs.50,000/- was granted under the head 'loss of earning capacity'.

17. Applying the afore noted decision, I consider it fair and reasonable to award a sum of Rs.50,000/- to the injured under the head 'loss of earning capacity'. Even though the injuries suffered by the injured is much more grievous than the injuries suffered by the injured in *Smt.Gyanti's* case (supra), I am awarding Rs.50,000/- only for the reason accident in the instant case occurred on 22.3.1990.

18. Under the head 'non pecuniary damages', Tribunal has awarded compensation in sum of Rs.2,25,000/- i.e. Rs.25,000/- towards pain and suffering and Rs.2,00,000/- towards deprivation of amenities and enjoyment of life.

19. Non pecuniary damages are granted where the

accident victim survives and suffers an injury. Case law in India would reveal that non pecuniary damages are divided into following sub heads:-

(i) Pain and suffering.

(ii) Damages for mental and physical shock.

(iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.

(iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.

(v) Disfigurement.

(vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

(vii) Loss of marriage prospects.

20. An injured is entitled to be put in the same position as he would have been if he had not be wronged but it is impossible to be achieved when it comes to non pecuniary damages. A valuation of general damages or non pecuniary damages for pain, suffering, loss of amenities, disfigurement

and loss of expectation of life create a problem. In order to determine non pecuniary damages, guidance can be taken from the facts such as injury suffered by the injured, age of the injured, period of hospitalization, time spent for recovery etc.

21. An analysis of above discussion in relation with facts of the instant case reveals that the compensation awarded by the Tribunal is wanting in three areas i.e. pain and suffering, disfigurement and loss of marriage prospects.

22. Considering that injured was aged only 4½ years at the time of the accident, the grievous injury suffered by him and also the fact that he remained under treatment for a period of 1½ years, compensation in sum of Rs.25,000/- towards pain and suffering is inadequate.

23. Disfigurement has always been regarded as an important element in assessing damages for the reason same affects the personality of the injured. Disfigurement leads to shunning of an injured by the society. It further becomes a source of depression and humiliation for an injured. An inevitable consequence of disfigurement in most of the cases is that it leads to loss of marriage prospects of an injured.

24. Thus, in my opinion, Tribunal clearly erred in not awarding any compensation to the injured under the head 'disfigurement' and 'loss of marriage prospects'.

25. Additionally, I may note that in several decisions I have noted a judicial trend that courts have been awarding about Rs.3 lacs under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above (See decision in MAC.APP.No.228/2006, *Oriental Insurance Company Ltd. Vs. Vijay Kumar Mittal & Ors.* Decided on 11.5.2007).

26. Therefore, I consider it reasonable to award to the injured further compensation in sum of Rs.75,000/- under the head 'non pecuniary damages', which includes enhancement for pain and suffering, disfigurement and loss of marriage prospects.

27. Thus, compensation is enhanced by a further sum of Rs.1,25,000/-.

28. Enhanced compensation shall be paid together with interest @ 6% per annum from the date of the claim petition till the date of realization.

29. It is further directed that enhanced compensation together with accrued interest thereon shall be deposited in a fixed deposit with a Nationalized Bank for a period of 5 years. Liberty is granted to the parties to withdraw yearly/monthly/quarterly interest as the case may be.

30. Appeal stands disposed of.

31. No costs.

July 11, 2007 PRADEEP NANDRAJOG, J.
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